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Admitted to Practice in  
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Hon. Janet Napolitano  
Governor  
State of Arizona  
1700 West Washington  
Phoenix, AZ 85007-0001

Dear Governor Napolitano,

I apologize for the delay in providing this report concerning my investigation into the official handling of the prison hostage incident that occurred in January of this year. My law practice has taken a great deal of time in recent months, and it has been somewhat difficult for me to complete this project.

I have now finished my review of all tape recordings of the hostage negotiations, the comprehensive logs and journals that were maintained by the appropriate authorities throughout these extraordinary events, the Arizona Department of Corrections (ADOC) Tactical Support Unit (TSU) curriculum manual for the training of correctional officers, several emergency preparedness assessments of the prison complex in question made within the past decade, and a number of articles and publications dealing with similar crisis situations. I am therefore pleased to submit this report for your consideration.

Because I envision that this report may be released to the public, and invariably will find its way into the hands of inmates currently serving time in our correctional institutions, I intend to be brief and very general in my observations. It is not my intention to provide prisoners who

might someday be tempted to provoke a similar incident with detailed information that they might find useful.

My conclusions, none of which will likely be surprising to anyone who closely followed the events, are generally as follows:

1) This was a potentially explosive and perilous situation from beginning to end. The inmates were armed and very dangerous, and the hostages were always directly in harm's way. As the TSU curriculum manual states "The jeopardy of the hostage is continuous and uninterrupted until he or she is released. Hostages should never be considered safe until they are in the hands of the authorities." The great weight of the evidence indicates that this mission statement was taken very seriously by those in charge of managing the instant crisis.

2) The negotiators were extremely skillful in keeping the lines of communication open and in obtaining concessions and cooperation from the inmates. Negotiators were appropriately rotated so they could be rested. It was also important to avoid excessive familiarity with the inmates. Understandably, some negotiators were more successful in their efforts than others. This was an important factor in their scheduling. As a practical matter, the individual personalities and approaches of the negotiators kept the inmates off balance and generally on the defensive. Each new negotiator brought a unique style to the table, yet they all managed to stay "on message." They also seemed to clearly understand the generally accepted principle that time is the most important ally of the hostage negotiator. They showed extraordinary patience. It was obvious from reviewing the tapes, some more than once, that fresh negotiators allowed the authorities to maintain a clear advantage over the increasingly stressed and fatigued inmates.

3) I discerned no coddling of the inmates. They were repeatedly pressured to make progress toward a peaceful solution. They were informed and understood that this was to be a

genuine, arm's length negotiation in an effort to end the stand-off. The negotiators made it clear that nothing would be "free," i.e. that anything the inmates wanted or needed would require something in return. Thus, in exchange for food, water, toiletries, and the like, the inmates were required to give up such things as a few bullets or various drugs from a medical kit in the tower. These admittedly small steps succeeded in building some degree of trust and confidence between the parties to the negotiation. Most importantly, the inmates were induced to permit periodic "welfare checks" during which prison officials (including a medical team) could observe and communicate directly with the guards held hostage. The inmates were constantly reminded that the consequences of a failure to reach a negotiated resolution would be most serious and unpleasant for everyone involved.

The discussions were very business-like. When one of the inmates questioned the accuracy of information in his official prison file, he was put in touch with an official who promised to look into the matter for him. There was nothing unusual about either the request or the response, except for the setting in which each occurred. The inmate was simply asking for a review of his classification, and he was assured that it would be done.<sup>1</sup>

4) Whenever a negotiator ceased making progress, or precipitated an undesirable response from the inmates, another was brought in to take his or her place. Despite these apparent breaks in continuity, the inmates were always made to know and understand that escape or release was not an option. In fact, they were both very realistic about the slim or nonexistent chance that they would ever taste freedom outside prison walls as young men, if ever, and no attempt was made to disabuse them of this idea. They knew that there would be significant legal consequences flowing from their conduct related to this incident, i.e. new criminal charges and

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<sup>1</sup> It would appear from several assessments of prison operations I have seen that the handling of prisoner grievances over classifications was less than satisfactory for some time, leading to considerable inmate frustration. Because it falls outside of the scope of my investigation, however, I have not explored this alleged deficiency.

longer prison sentences. This made them somewhat despondent and potentially more dangerous. One or the other would occasionally indicate that he had little or nothing to live for, and thus would not hesitate to take the lives of one or both hostages. The negotiators deftly handled such threats. They persisted in keeping the inmates focused on positive things, always emphasizing the desirability of a peaceful solution.

5) As indicated, there were some nervous moments during the many days of this ordeal. The inmates occasionally exhibited signs of fear, desperation and/or paranoia that would momentarily heighten tensions, until the negotiators were able to calm things down. The hostages also began showing signs of the "Stockholm Syndrome" (identification with captors) which might have added some pressure on those managing the crisis, but this appears to have been quickly recognized and handled appropriately. In my judgment, the command center exercised appropriate restraint and good judgment, all the while making tactical preparations for a full scale assault on the tower if such an unfortunate event became necessary.

6) It must be recognized that a few of the tense situations were precipitated by certain events and actions taken by those in charge, for example the perceived delay in delivering a handcuff key, the cutting of perimeter fences, the disruption of utilities to the tower, attempts to place listening devices, and problems encountered with various deliveries to and from the inmates. These were all the result of judgment calls that I am hesitant to criticize. As the TSU curriculum manual notes, "[t]he dynamics of hostage negotiations are constantly varying . . . ." and "[t]eams involved in hostage rescues must anticipate that a high number of variables will be present . . . ." I would assume that the Department of Corrections, together with all those involved, has reviewed this entire episode with an eye toward establishing guidelines and policies to address future potential trouble spots. Most decisions under the circumstances of a

hostage negotiation, however, have to be made on the spur of the moment in what is, at best, a dangerous and fast-moving environment. I find no fault in the decisions made here.

7) The use of family members in the negotiations was clearly beneficial. One of the inmates was close to his sister and she spent a great deal of time with him on the phone, trying to calm the situation and obtain a peaceful surrender. The other inmate's uncle, who had effectively raised him, performed the same role in an admirable fashion. These and other relatives were called upon to assist in defusing the situation, and in my view were most helpful.

8) Negotiations were never easy, because at least one of the inmates knew of and talked about the legal voidability of agreements made under duress. Thus, the two men were skeptical from the beginning that the negotiators and their principals would ever keep their words or honor any promises that were made. It was in this area that the negotiators and family members had the most difficulty. In the end, they were successful in persuading the inmates that the promises made to them would be kept.

9) Throughout all of this, the prison administration managed to keep the institution operating reasonably well. There was no panic, and little or no disorganization, even under the strain of these difficult events. Most importantly, there was no serious uprising by a prison population that was fully aware of what was happening.

10) As noted above, it was made clear to the inmates that if they surrendered, they would still have to face criminal charges arising out of their attempted escape and crimes against the hostages. The only promise made, other than personal safety, was that they would be transferred to prisons out of Arizona to serve out their outstanding sentences, pursuant to an existing interstate compact. I am aware that some citizens have questioned and/or criticized the eventual

honoring of that promise by the administration. I am of the firm opinion, however, that it was the right and proper thing to do.

First, it would not have been a good idea to keep these two men in the Arizona prison population for their own safety, as well as for the general good and order of the institution. There had simply been too much notoriety surrounding their conduct. There had also been consequences to other prisoners flowing from their escapade (a "lock down," for example, and heightened security that resulted in restricted privileges and a reduction in the availability of certain goods and services). Some might have sought revenge, necessitating a segregation of the offending inmates from the general population for an indefinite time into the future. The inmates would also likely have been viewed as violent troublemakers by the guards, perhaps resulting in harsh or retaliatory treatment. In other words, the continued presence of these men would have only created more problems.

More importantly, however, it was crucial that the prison administration keep its word. Anything less would have spelled trouble with the entire prison population. As Thomas J. Fagan, Ph.D. has said in his treatise "Negotiating Correctional Incidents: A Practical Guide (2003):

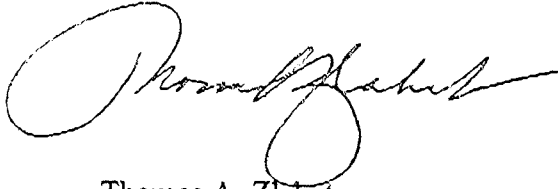
[T]he negotiator's credibility within the institution and the agency's willingness to follow through with promises made during the crisis are critical to future successes. The inmate grapevine is such that word of unmet promises would spread quickly throughout the inmate population and would make future episodes more difficult to successfully negotiate.

11) In short, then, it is difficult if not impossible to criticize the handling of such a volatile and potentially violent hostage negotiation that ends with a peaceful surrender and no loss of life. I am certainly not willing to do so. It should be understood, however, that I was not

asked to investigate the security breaches that allowed this situation to develop in the first instance. My only role has been to examine the way in which the negotiations were conducted. In my opinion, the officials handling this difficult and delicate task were thoroughly competent and professional. Each of them served the citizens of this state, and the parties involved, with great distinction.

I would be pleased to discuss this matter with you further at any time. Thank you for allowing me to be of service.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Thomas A. Zlaket". The signature is fluid and stylized, with a large initial "T" and a long, sweeping underline.

Thomas A. Zlaket